

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE:

CASE NO. 19-35759

MITCHELL JENKINS

CHAPTER 13

Debtor.

JUDGE: JACQUELINE P. COX

**OBJECTION TO CONFIRMATION OF PLAN FILED DECEMBER 19, 2019 AND  
AMENDED PLAN FILED ON FEBRUARY 5, 2020**

The Estate of Giorgio Nava, Creditor, by and through its Personal Representative, Cristina Bacci, and the undersigned counsel, objects to the confirmation of the Chapter 13 plan and the Amended Plan, for the following reasons:

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general orders of the Northern District of Illinois.
2. Venue is fixed in this Court pursuant to 28 U.S.C. § 1409.
3. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).
4. The debtor filed a Petition for relief under Chapter 13 on December 19, 2019 and a proposed Plan. Subsequently on February 5, 2020, debtor filed an Amended Plan.
5. The creditor, the Estate of Giorgio A. Nava, by and through its Personal Representative, Cristina Bacci, files Objection to the Plan filed by the debtor, Mitchell Jenkins, on December 19, 2019 and the Amended Plan filed by the debtor, Mitchell Jenkins on February 5, 2020 and in support thereof, the creditor asserts the following facts:

- (A) On September 6, 2019 at approximately 6:22 PM, debtor, Mitchell Jenkins was driving a Cadillac Escalade, in Miami Florida, which vehicle had been rented by Robert Murphy, passenger in the Cadillac, from Enterprise Leasing Company of Florida LLC. While attempting to turn left, at or near the intersection of NW. 79th St. and NW. 32nd Ave. in Miami – Dade County, Mitchell Jenkins failed to yield the right of way and pulled in front of oncoming traffic and collided with the motorcycle driven by Giorgio Nava, fifty nine (59) years old, who was killed as a result of the collision.

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Defendant Jenkins was cited by the Miami Dade County police for violating vehicle code section 316.075, failing to yield while turning.

- (B) On November 5, 2019, Cristina Bacci, as the Personal Representative of the Estate of Giorgio Nava filed a Wrongful Death action in the Miami Dade County Circuit Court for the State of Florida. A copy of the Wrongful Death complaint is attached hereto as Exhibit "A" and was also attached to the Proof of Claim, filed by the Estate of Giorgio Nava in this bankruptcy matter.
- (C) On November 11, 2019, debtor Mitchell Jenkins, was served with a summons and complaint in Hanover Park, Illinois, in the above entitled Wrongful Death action filed by Cristina Bacci, as the Personal Representative of the Estate of Giorgio A. Nava and naming Mitchell Jenkins, as one of the defendants. Please see Exhibit "A" which contains the verified return of service confirming service upon Mitchell Jenkins.
- (D) Defendant, Mitchell Jenkins, has never filed an appearance or a responsive pleading in the aforementioned Wrongful Death action. Instead, on December 19, 2019, Mitchell Jenkins filed this Chapter 13 Bankruptcy action which resulted in a Stay of the Wrongful Death action pending against him in Miami, Florida.
- (E) Thereafter, Defendant, Enterprise Leasing Company of Florida, LLC removed the case to the United States District Court for the Southern District of Florida where the case is currently pending. Please see Exhibit "A".

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- (F) The remaining Defendant, Robert Murphy, who also resides in the Chicago, Illinois area has been evasive and has eluded service of process.
  - (G) At the time of the fatal collision, Giorgio Nava was 59 years old, with a base salary of approximately \$50,000 per year, plus bonuses, and the sole supporter of his 86-year-old Mother, Francesca Cortellino and two adult sisters in Italy.
- 6. The Estate of Giorgio Nava has filed and served a Proof of Claim for the Wrongful Death of Giorgio Nava, with declared value of three million dollars (\$3,000,000.)
  - 7. The original Chapter 13 plan filed on December 19, 2019 and the Amended Chapter 13 plan filed on February 5, 2020, do not contain any provision for payment to the Estate of Giorgio Nava for the death of Mr. Nava, as a result of the negligence and carelessness of Mitchell Jenkins in the operation of the rented Cadillac Escalade in Miami, Florida on September 6, 2019.
- (A) Neither Plan adequately or fairly addresses the Wrongful Death claim made by the Estate of Giorgio Nava for the death of Mr. Nava and of which Debtor Mitchell Jenkins has known about since the fatal automobile accident of September 6, 2019 and certainly since he was served with Summons and Complaint in the Wrongful Death claim on November 11, 2019.

Part number 5 (five) of both the Original Plan and the Amended Plan make no reference or provision for payment of the Wrongful death claims pending and asserted against Mitchell Jenkins, in the aforementioned Wrongful Death action pending in Miami, Florida.

The Debtor asserts and proposes in Part five (5) of the Plans to resolve nonpriority unsecured claims at 10% of the total amount of these claims and concludes that an estimated payment of \$2,108.40 is appropriate, without

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any rationale or explanation. Assuming that the Wrongful Death claim is considered a non-priority unsecured claim, it has been stated in the Proof of Claim that it has a value of approximately Three- Million Dollars (\$3,000,000), subject to proof and Debtors estimated payment of \$2,108.40 is inadequate, and unreasonable.

8. The Chapter 13 Plan does not provide that the Estate of Giorgio Nava will be paid an adequate and reasonable amount related to the damages caused by Debtor Mitchell Jenkins in the fatal automobile collision of September 6, 2019 in Miami, Florida.

**WHEREFORE**, Creditor prays for an entry of the attached proposed Order Denying Confirmation of the Chapter 13 Plan and the Amended Plan.

Dated this 7<sup>th</sup> day of April, 2020.

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